

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 5911 of 1989

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the Judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

JASHWANTKUMAR NAROTTAMDAS MEVCHA
VERSUS
INDIAN OIL CORPORATION LTD.

Appearance:

MR AD MITHANI for the Petitioner
None present for the Respondents

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 30/03/2000

C.A.V. JUDGMENT

1. The matter was called out for hearing in three rounds, but none present for the respondents. The

arguments of the counsel for the petitioner were heard and the judgment was ordered to be kept C.A.V.. In the second sitting, the learned counsel for the respondent appeared in the court and submitted that he was busy in other court and in three rounds when this matter was called out for hearing he could not remain present. The arguments of Shri G.N. Shah, counsel for the respondent No.4 were heard on the merits of the matter in the absence of the counsel for the petitioner.

2. The petitioner, by this petition, under Article 226 of the Constitution is praying for quashing and setting aside the decision of the respondents to give letter of indent dated 28th March, 1989 in favour of Shri Lalitkumar Jamnadas Ghodasara, the respondent No.4 herein. The respondent No.1 invited the applications to grant distributorship of L.P.G. Indane gas from amongst unemployed graduates at Thangadh, Bagasara and Manavadar. For Manavadar, the respondent No.4 also applied for this distributorship under the same category. After completing formalities, these applications were considered by the Oil Selection Board (West). The respondent No.4 was placed in the merit list at No.1 and accordingly the letter of indent was given in his favour dated 28th March, 1989. Hence, this special civil application.

3. Learned counsel for the petitioner raised only contention that the respondent No.4 has wrongly been taken to be under the category of unemployed graduated. On the date of application and till date of the letter of indent was issued to him in his favour, he was in permanent service.

4. Shri Shah, on the other hand, contended that the respondent NO.4 was not in permanent service. It was only a case where the respondent NO.4 was in temporary service. Otherwise also, Shri Shah contends that the employees who are in job which are not regular or not likely to become permanent or continue are considered to be eligible.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

6. The reservation in allotment for dealership/distributorship of L.P.G. of I.O.C. is there for different categories. If we go by this, I find that 70% dealership/ distributorship are reserved for one or the other category. Only 30% are there for other categories. In this case, we are concerned with

the category of "unemployed graduates" including Engineering graduates remaining unemployed at least for one year from the date of application. In reply to the special civil application by the respondent - company it is stated that under clause 2.11 pertaining to unemployed graduates, the eligibility criteria and the quota for eligibility has been laid down. As per this clause, it is provided that in case of unemployed graduates candidate who are employed in jobs which are not regular/not likely to become permanent or continue they will be considered eligible. It is also provided that self-employed persons can also apply. However, on such cases, what the respondent stated in the reply that the discretion of Oil Selection Board will be final and binding. If we go by this eligibility then those graduate candidates who are employed in jobs which are not regular/ not likely to become permanent or continue, then can be considered to be eligible under the category of "unemployed graduates".

7. The respondent NO.4 has also filed reply to this special civil application and he is unable to show therein that his employment with M/s.Prabhat Solvent Extraction Industries Pvt. Ltd. was not regular/ not likely to become permanent or continue. The respondent No.4 was appointed under the order of that company dated 6th July, 1984 on probation of 18 months from the date of joining. In pursuance of this order, he joined the services on 18th July, 1984. The appointment on probation cannot be said to be or falls under the category of not regular/ not likely to become permanent or continue. The respondent NO.4 was confirmed in the employment of the aforesaid company on 11th January, 1986. So on 8th November, 1985, the respondent NO.4 was not unemployed for a period of one year. The respondent No.4 was in continuous service of that company. He resigned from his job on 15th April, 1989 that is after issuance of the letter of indent in his favour by the Indian Oil Corporation. The respondent NO.4, in these facts, was not eligible to apply for this distributorship/ dealership under the category of "unemployed graduates". His application was illegally entertained by the respondent company and the distributorship/ dealership has been granted in his favour. The respondent No.4 in his reply has admitted that his appointment was on probation. This probation was followed by his confirmation in the employment. If we go by the substance, it is a clear case where his application for dealership/ distributorship has wrongly been entertained.

8. In the result, this special civil application succeeds and the same is allowed and it is hereby declared that the respondent No.4 was not eligible to apply for dealership/distributorship of Indian Oil Corporation Ltd. in response to the advertisement in question. As a result of this declaration, the distributorship/dealership which has been granted in favour of the respondent No.4 and letter of indent issued in his favour are quashed and set aside. the respondent NO.4 is forthwith restrained from carrying on the work of dealership/ distributorship of L.P.G. of Indian Oil Corporation Ltd. The respondents are free to take fresh decision in respect of grant of distributorship/ dealership amongst other candidates who applied excluding the respondent No.4. Rule is made absolute accordingly with no order as to costs.

zgs/-